

UNITED STATES BANKRUPTCY COURT
 NORTHERN DISTRICT OF ILLINOIS
 Eastern Division

In Re:)	BK No.: 19-03734
)	(Jointly Administered)
)	Chapter: 11
TOTAL FINANCE INVESTMENT INC., et)	Honorable Carol A. Doyle
al.,)	
)	
Debtor(s))	

**INTERIM ORDER (I) PROHIBITING UTILITY PROVIDERS
 FROM ALTERING, REFUSING OR DISCONTINUING UTILITY SERVICE,
 (II) DETERMINING ADEQUATE ASSURANCE OF PAYMENT FOR FUTURE UTILITY
 SERVICES, (III) ESTABLISHING PROCEDURES FOR DETERMINING ADEQUATE
 ASSURANCE OF PAYMENT, AND (IV) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”) of Total Finance Investment Inc. and its affiliated debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “Debtors”) for entry of an order (this “Interim Order”), pursuant to sections 105(a), 363, and 366 of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004, (i) prohibiting the Utility Providers from altering, refusing, or discontinuing service to the Debtors, (ii) determining adequate assurance of payment for future utility services, (iii) establishing procedures for determining adequate assurance of payment to the Utility Providers, and (iv) granting related relief, all as more fully described in the Motion; and upon consideration of the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and Internal Operating Procedure 15(a) of the United States District Court for the Northern District of Illinois; and the matter being a core proceeding within the meaning of 28 U.S.C. § 157(b)(2); and this Court being able to issue a final order consistent with Article III of the United States Constitution; and venue of this proceeding and the Motion in this District being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and appropriate notice of and the opportunity for a hearing on the Motion having been given under the circumstances and it appearing that no other or further notice need be provided other than as set forth in the Motion; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court; and all objections, if any, to the Motion having been withdrawn, resolved or overruled; and the relief requested in the Motion being in the best interests of the Debtors’ estates, their creditors and other parties in interest; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and all capitalized terms used but not otherwise defined herein having the meanings ascribed to such terms in the Motion; and after due deliberation and sufficient cause appearing therefor, it is **HEREBY ORDERED THAT:**

1. The relief requested in the Motion is **GRANTED** on an interim basis as set forth herein.

2. The Final Hearing on the Motion shall be held on _____, 2019 at ____:____.m., prevailing Central Time. Any objections or responses to entry of a final order on the Motion shall be filed on or before 4:00 p.m., prevailing Central Time, on _____, 2019 (the “Objection Deadline”) and served on the following parties: (i) the Debtors, Total Finance Investment Inc., 3400 N Pulaski Rd., Chicago, Illinois 60641, Attn: Kenichiro Hoshika (hoshika@caroutlet.com); (ii) proposed counsel to the Debtors, Sidley Austin LLP, One South Dearborn, Chicago, Illinois 60603, Attn: Brian Guzina (bguzina@sidley.com) and Jackson T. Garvey (jgarvey@sidle



& Cutler LLP, 111 West Monroe Street, Chicago, Illinois 60603, Attn: David B. Audley (audley@chapman.com) and Mia D. D'Andrea (dandrea@chapman.com); (iv) counsel to Westlake Services LLC, Buchalter, Nemer, Fields and Younger, 1000 Wilshire Boulevard, Suite 100, Los Angeles, California 90017, Attn: William Brody (wbrody@buchalter.com); (v) counsel to 11 x 11, LLC, DLA Piper, 444 West Lake Street, Suite 900, Chicago, Illinois, 60606, Attn: Richard A. Chesley (richard.chesley@dlapiper.com) and Scott Kapp (scott.kapp@dlapiper.com); (vi) the Office of the United States Trustee for the Northern District of Illinois, 219 S Dearborn Street, Room 973, Chicago, Illinois 60604, Attn: Roman Sukley (roman.l.sukley@usdoj.gov); (vii) any statutory committee appointed in these chapter 11 cases; and (viii) any party that has requested notice pursuant to Bankruptcy Rule 2002.

3. Absent compliance with the procedures set forth in the Motion and this Interim Order, all Utility Providers are prohibited from altering, refusing, or discontinuing service on account of the commencement of these chapter 11 cases, any unpaid prepetition charges, or any perceived inadequacy of the Proposed Adequate Assurance, and all Utility Providers are deemed to have received adequate assurance of payment in accordance of section 366 of the Bankruptcy Code.

4. The Debtors will deposit the Adequate Assurance Deposit into the Adequate Assurance Account within three (3) days following the entry of this Order.

5. Funds held in the Adequate Assurance Account and any Adequate Assurance Deposit on account of any Utility Provider shall be returned to the Debtors upon the earlier of (i) reconciliation and payment by the Debtors of the Utility Provider's final invoice in accordance with applicable non-bankruptcy law following the Debtors' termination of utility services from such Utility Provider, and (ii) the effective date of any chapter 11 plan or such other time as these chapter 11 cases may be closed, without further order of this Court; provided that there are no outstanding disputes related to postpetition payments due.

6. The Adequate Assurance Deposit, in conjunction with the Debtors' cash on hand, cash flow from operations, and their proposed use of cash collateral and debtor in possession financing, demonstrate the Debtors' ability to pay for future utility services in the ordinary course of business (collectively, the "Proposed Adequate Assurance") and constitute sufficient adequate assurance to the Utility Providers. Any liens or other interests in any funds deposited into the Adequate Assurance Account shall be subordinate to the Utility Providers' respective interests in the Adequate Assurance Deposits.

7. The following Adequate Assurance Procedures are hereby approved in their entirety on an interim basis:

(a) Within three (3) business days of the date upon which this Interim Order is entered, the Debtors will fax, e-mail, serve by overnight mail, or otherwise expeditiously send a copy of this Motion and the order to each Utility Provider listed on the Utility Service List.

(b) Any Utility Provider desiring additional assurances of payment beyond the Adequate Assurance Deposit, whether in the form of deposits, prepayments, or otherwise, must serve a request (an "Additional Assurance Request") so that it is actually received by: (i) the Debtors, Total Finance Investment Inc., 3400 N Pulaski Rd., Chicago, Illinois, 60641, Attn: Kenichiro Hoshika; and (ii) proposed counsel to the Debtors, Sidley Austin LLP, One South Dearborn Street, Chicago, Illinois 60603, Attn: Bojan Guzina and Jackson T. Garvey (collectively, the "Notice Parties").

(c) Any Additional Assurance Request must: (i) be made in writing; (ii) set forth the account number and location for which utility services are provided; (iii) include a summary of the Debtors' payment history relevant to the affected account(s), including any security deposits; (iv) certify the amount that is equal to two weeks of utility service it provides to the Debtors, calculated as a historical average over the past twelve (12) months; (v) certify that it currently is not paid in advance for its services; (vi) explain why the Utility Provider believes the Debtors' Proposed Adequate Assurance is not sufficient adequate assurance of future payment; and (vii) specify the amount and nature of assurance of payment that would be satisfactory to the Utility Provider.

(d) If a Utility Provider fails to serve on the Notice Parties an Additional Assurance Request, such Utility Provider shall be (i) deemed to have received adequate assurance of payment "satisfactory" to such Utility Provider in compliance with section 366 of the Bankruptcy Code; and (ii) prohibited from discontinuing, altering, or refusing service to, or discriminating against, the Debtors on account of the commencement of the Debtors' chapter 11 cases or any unpaid prepetition charges, or requiring additional assurance of payment other than the Proposed Adequate Assurance.

(e) Upon the Debtors' receipt of an Additional Assurance Request, the Debtors will have until the later of (i) fourteen (14) days from the receipt of such Additional Assurance Request, and (ii) thirty (30) days from the Petition Date (collectively, the "Resolution Period") to negotiate with such Utility Provider to resolve such Utility Provider's Additional Assurance Request; provided, however, that the Resolution Period may be extended by mutual consent of the Debtors and the Utility Provider.

(f) The Debtors may, in their sole discretion and without further order of this Court, resolve any Additional Assurance Request by mutual agreement with a Utility Provider if the Debtors determine that such Additional Assurance Request is reasonable, and may, in connection with any such agreement and in their sole discretion, provide a Utility Provider with additional adequate assurance of future payment, which may include but shall not be limited to cash deposits, prepayments or other forms of security, in each case, without further order of this Court.

(g) To the extent any Utility Provider receives any other value from the Debtors as adequate assurance of payment, the Debtors may reduce the Adequate Assurance Deposit maintained in the Adequate Assurance Account on account of such Utility Provider by the amount of such other value.

(h) If the Debtors determine that the Additional Assurance Request is not reasonable or are unable to reach an alternative resolution with the Utility Provider within the Resolution Period, the Debtors will file a motion pursuant to section 366(c) of the Bankruptcy Code (a "Determination Motion") seeking a determination from the Court that the Adequate Assurance Deposit Account, together with any additional consideration the Debtors offer, constitutes adequate assurance of payment.

(i) Pending resolution of any such Determination Motion, the relevant Utility Provider shall be prohibited from altering, refusing, or discontinuing service to the Debtors on account of: (i) unpaid charges for prepetition services; (ii) a pending Additional Assurance Request; (iii) any objections filed in response to the Proposed Adequate Assurance; or (iv) the commencement of these chapter 11 cases.

(j) Absent compliance with the Adequate Assurance Procedures and the terms of the Proposed Interim Order and the Proposed Final Order, the Debtors' Utility Providers are prohibited from altering, refusing, or discontinuing service on account of the commencement of these chapter 11 cases and/or any unpaid charges for prepetition services provided to any of the Debtors and are deemed to have received adequate assurance of payment in accordance with section 366 of the Bankruptcy Code.

8. The Debtors are authorized, in their sole discretion, to amend the Utility Service List attached as Exhibit 1 to this Interim Order to add or delete any Utility Provider, and this Interim Order shall apply to any Utility Provider that is subsequently added to the Utility Service List. Any such amended Utility Service List shall be filed with this Court.

9. The inclusion of any entity on, or the omission of any entity from, the Utility Service List shall not be deemed an admission by the Debtors that such entity is or is not a “utility” within the meaning of section 366 of the Bankruptcy Code, and the Debtors reserve all rights and defenses with respect thereto.

10. For those Utility Providers that are subsequently added to the Utility Service List, the Debtors will serve a copy of this Interim Order and the Motion on the subsequently added Utility Provider and deposit one-half of the Debtors’ average monthly cost of utility services in the Adequate Assurance Account for the benefit of such Utility Provider, and any such subsequently added entities shall make any Additional Assurance Request in accordance with the Adequate Assurance Procedures.

11. The Debtors may terminate the services of any Utility Provider and are immediately authorized to reduce the Adequate Assurance Deposit by the amount held on account of such terminated Utility Provider; provided that there are no outstanding disputes related to postpetition payments due.

12. Notwithstanding entry of this Interim Order, nothing herein shall create, nor is intended to create, any rights in favor of or enhance the status of any claims held by any party.

13. Notwithstanding the relief granted in this Interim Order and any actions taken pursuant to such relief, nothing in this Interim Order shall be deemed (i) an admission as to the validity of any claim against the Debtors; (ii) a waiver of the Debtors’ rights to dispute any claim; (iii) a promise or requirement to pay any prepetition claim; (iv) a waiver of any claims or causes of action that may exist against any creditor or interest holder; (v) an approval or assumption of any agreement, contract, or lease under section 365 of the Bankruptcy Code; (vi) a waiver or limitation of the Debtors’ rights under the Bankruptcy Code or any other applicable law; or (vii) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to the Motion are valid, and the Debtors expressly reserve their rights to contest the extent, validity, or perfection or seek avoidance of all such liens.

14. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b) because the relief granted in this Interim Order is necessary to avoid immediate and irreparable harm to the Debtors’ estates.

15. Notice of the Motion as provided for therein shall be deemed good and sufficient notice of such Motion, and the requirements of Bankruptcy Rule 6004(a) and the Local Rules for the United States Bankruptcy Court for the Northern District of Illinois are satisfied by such notice.

16. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order are immediately effective and enforceable upon its entry.

Enter:

Honorable Carol A. Doyle

United States Bankruptcy Judge

Dated:

Prepared by:

Bojan Guzina (ARDC # 6277585)

Jackson T. Garvey (ARDC #6320652)

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PROPOSED ATTORNEYS FOR THE DEBTORS AND
DEBTORS IN POSSESSION